

**COUNSEL IDENTIFICATION ON FINAL PAGE**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

THE CONSOLIDATED DELTA SMELT  
CASES

Lead Case:  
1:09-cv-407-LJO-BAM

Member Cases:  
1:09-cv-422-LJO-DLB  
1:09-cv-631-LJO-DLB  
1:09-cv-892-LJO-GSA

Partially Consolidated With:  
1:09-cv-480-LJO-GSA  
1:09-cv-1201-LJO-DLB

**STATUS REPORT AND REQUEST  
TO FURTHER EXTEND THE  
REMAND SCHEDULE**

THE CONSOLIDATED SALMONID  
CASES

Lead Case:  
1:09-cv-1053-LJO- BAM

Member Cases:  
1:09-cv-1090-LJO-DLB  
1:09-cv-1378-LJO-DLB  
1:09-cv-1520-LJO-DLB  
1:09-cv-1580-LJO-DLB  
1:09-cv-1625-LJO-SMS

**STATUS REPORT AND REQUEST  
TO FURTHER EXTEND THE  
REMAND SCHEDULE**

STATUS REPORT & REQUEST FOR FURTHER EXTENSION  
NOS. 09-407-LJO-BAM & 09-1053-LJO-BAM

Pursuant to the Court's Memorandum Decision and Order Regarding Motion to Extend Remand Schedule, Smelt Doc. No. 1106; Salmonid Doc. No. 739 (Apr. 9, 2013) ("Order"), the parties submit this status report on the Collaborative Science and Adaptive Management Program ("CSAMP"). Federal Defendants, along with Plaintiff-Intervenor California Department of Water Resources ("DWR") (collectively "Movants"), also respectfully move the Court to further extend the respective remand schedules by an additional year.<sup>1</sup>

### INTRODUCTION

The April 2013 Order granted an initial one-year extension of the existing remand deadlines in both cases to allow the parties to pursue the CSAMP, which the Court recognized anticipated a "level of collaboration ... much more intense and potentially far-reaching than any previously-described collaborative efforts." Order at 8. The Order required the parties to submit a joint status report on or before February 15, 2014, extended to February 18, 2014, *Smelt* Doc. No. 1106; *Salmonid* Doc. No. 739, and stated that a one-year extension would be granted if "substantial progress" had been made along the lines outlined by Movants. Order at 15-16.

In requesting the original extension, Movants reported that there had been a significant breakthrough in the development of the Bay Delta Conservation Plan ("BDCP"), Hoffman-Floerke Decl., Smelt Doc. No. 1101-1, Salmon Doc. 731-1, at ¶ 2, and that the increasingly collaborative nature of discussions in connection with the BDCP had "spilled over" into discussions of the implementation of the U.S. Fish and Wildlife Service's ("FWS") 2008 biological opinion ("Smelt BiOp") reasonable and prudent alternative ("RPA"), and the 2009 National Marine Fisheries Service ("NMFS") biological opinion ("Salmon BiOp") RPA. *Id.* at ¶ 3; *see also* Smelt Doc. 1101-5, Salmon Doc. 731-5, at ¶¶ 1, 3, 7; Smelt Doc. 1101-2, Salmon

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<sup>1</sup> On January 27, 2014, the Ninth Circuit Court of Appeals continued oral argument in the *Consolidated Salmonid Cases* from February 10, 2014 until September 2014, in light of its "anticipated opinion" in the *Consolidated Delta Smelt Cases* appeal, which was argued in September 2012. *San Luis & Delta-Mendota v. Locke*, Case No. 12-15144 (9th Cir. Jan. 27, 2014), Doc. 125. The Ninth Circuit's "anticipated opinion," might affect in some way the remand schedule in the *Consolidated Delta Smelt Cases*. Accordingly, following issuance of that opinion, Federal Defendants will return to the Court for any appropriate adjustments. Because it is presently unknown when that opinion will be issued or what its effects might be, Federal Defendants join in this status report and ask the Court to grant another extension, for the reasons discussed herein.

Doc. 731-2, ¶¶ 4-6; Smelt Doc. 1101-3, Salmon Doc. 731-3, at ¶¶ 3, 25. At the management and biologist levels, state and federal agencies supported collaborative scientific efforts to achieve more protection for the fishery resources, as well as more efficient use of scarce water supplies. As a result, Movants opined, and the Court subsequently held, that there had been a genuine “paradigm shift,” which amounted to a change in circumstances that had not been anticipated at the time judgments in the cases were entered. Order at 8. Movants also described four categories of information that it intended to pursue through CSAMP: science regarding the fall outflow related to the fall X2 RPA action; studies of turbidity triggers which give warning of Delta Smelt presence near the Projects’ intake; development of life-cycle models for Delta Smelt and Chinook salmon; and further studies regarding salmonid survival. *See Hoffman-Floerke Decl.* at ¶¶ 6-14.

As Movants’ summarize herein, and as detailed in supporting declarations and exhibits, substantial progress has been made in developing and implementing CSAMP. And a roadmap, including schedules and proposed milestones, for near-, mid-, and long-term future CSAMP activities has been developed.<sup>2</sup> Scientific work related to fall X2, turbidity triggers, the development of life-cycle models, and understanding salmonid survival, has also advanced during this period. *See King Moon Decl.* ¶¶ 3-9; *see Lohofener Decl.* ¶¶ 12, 13. A further extension is warranted to allow this important scientific work to continue. Following Movants’ summary, the remaining parties provide their views regarding the progress achieved to date, and on a further extension of the remand deadlines.

## DISCUSSION

### **I. Movants’ Summary Of Progress And Future Steps<sup>3</sup>**

The Order requires a status update in three basic areas: (1) progress made thus far in implementing the program; (2) the future direction of the program; and (3) how CSAMP results

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<sup>2</sup> The schedule of some actions may have to be adjusted, because current drought conditions will likely preclude Reclamation and DWR from allowing any experiments for CSAMP that reduce water supply this year. Declaration of Paul Fujitani ¶ 8.

<sup>3</sup> Given time constraints, Movants have had no opportunity to review or respond to most of the separate positions of the parties.

may be incorporated into the Endangered Species Act (“ESA”) consultation processes. Order at 15. As explained below, significant progress has been achieved to date, and the steps that will be taken in 2014 and beyond will help inform the ongoing ESA consultation processes by, among other things, providing stakeholders and Movants additional information from ongoing studies about the listed species, Rea Decl. ¶ 19; allowing stakeholders the opportunity for further collaboration in evaluating the available scientific information and opportunity for consensus in its application; and providing more time for the development of agreed-upon models for the consultation. These steps may help inform the ESA consultation process and improve the short and long-term protection of the listed species. And to the extent these steps result in consensus among some or all stakeholders, the results from this collaborative effort could help reduce the risk of continued or future litigation. *Id.* at 20.

**A. In The Past Year, Substantial Progress Has Been Made Related To CSAMP And Delta-Related Scientific Work.**

The CSAMP, as the Court recognized, is an unprecedented collaborative process involving a diverse group of private, State, Federal, and local agencies. To date, FWS staff alone has dedicated more than 1000 man hours to it. Lohofener Decl. ¶ 5. Progress has not come easy, as the four areas identified above are areas which have historically produced the most disagreement among the parties. Nonetheless, “excellent progress” has been made. *Id.* ¶ 7. The parties have agreed on foundational conceptual models, key questions, and with the exception of a few items as noted herein, priority workplans. *See id.*; Rea Decl. ¶¶ 5-8, 10. Completion of this research will require further extension of the remand schedule contemplated by this Court’s 2013 order. Rea Decl. ¶¶ 9-10, 17.

Since the extension, a two-tiered organizational structure was established to implement CSAMP, including: (1) a Policy Group made up of agency directors and top-level executives from the entities involved the litigation; and (2) the Collaborative Adaptive Management Team (CAMT), made up of designated managers and senior scientists from a range of State, Federal, and local entities to serve as the working group under the direction of the Policy Group. Rea Decl. ¶ 3, Ex. A (Progress Report to the Collaborative Science Policy Group [“CSAMP Progress

Report”)) at ii, 1. The roles for each group have been defined, with the Policy Group focusing on functions like collaborating at the leadership level, resolving process issues, selecting CAMT members, and reviewing progress and proposing changes and improvements as needed. *Id.* at 60. The eleven-member CAMT, co-chaired by the Nature Conservancy and State and Federal Contractors Water Agency, is serving as the working group under the direction of the Policy Group. *Id.* at ii, 1.

As promised, CSAMP, through its CAMT, spent the year forming and developing key questions and experimental designs, which take the form of workplans in the CSAMP Progress Report. *Id.* at 10-31. CAMT has met regularly, established a mission statement to serve as the foundation of the CAMT process, and agreed to standards for meeting conduct including transparency, accessibility, honesty, timeliness, and open-mindedness, to help foster productive collaboration. *Id.* at 2; Lohoefer Decl. ¶ 7. Additionally, as anticipated, the CAMT science process will be “broadly consistent with the adaptive management process described in the DOI [Department of Interior] Adaptive Management Technical Guide and the Delta Science Plan.” Rea Decl. ¶¶ 3-4, Ex. A at 5; Salmon Doc. 731-3 ¶ 11. Consistent with the first steps of that adaptive management process, CAMT has identified and agreed to focus on three priority areas:

1. Fall Outflow management for Delta Smelt
2. Old and Middle River (OMR) flow management and entrainment of Delta Smelt
3. South Delta salmon survival

Rea Decl. ¶ 3, Ex. A (CSAMP Progress Report) at 3-4. For each topic area, CAMT followed the standard steps of adaptive management by first articulating problem statements, including the identification of uncertainties and disagreements, then developing conceptual models, and formulating key questions and hypotheses. The comparison of different conceptual models has proven to be an effective method for shared learning and identifying areas of agreement and disagreement. *Id.* at 6. Based on this work, CAMT proposed “near-term priority work elements” within each priority area that would be particularly relevant and timely for addressing key questions and informing future consultation processes. *Id.* at 10. Workplans for the three priority areas, and a detailed schedule for each, are provided in the CSAMP Progress Report, and are

1 summarized briefly below.

2 **B. Schedules and Milestones For Future CSAMP Activities Have Been**  
3 **Developed But Are Dependent On Another Remand Extension.**

4 Generally, as CSAMP continues, CAMT will develop more detailed specification of  
5 questions, hypotheses, and conceptual models, potentially incorporating review by scientific  
6 experts. There was broad agreement within the CAMT that a successful long-term program of  
7 collaborative science and adaptive management requires a credible and legitimate framework  
8 and process that ensures broad-based acceptance and support for the science and decisions  
9 resulting from the process. Rea Decl. ¶ 3, Ex. A (CSAMP Progress Report) at 8. To that end,  
10 CAMT expects to initiate “Scoping Teams” that will coordinate with technical groups to ensure  
11 that products remain relevant to the CAMT scope and mission, assign specific scientific  
12 investigations to qualified technical experts, and establish a structured review process for study  
13 plans and work products. *Id.* at 10. Assuming CSAMP proceeds under another Court extension,  
14 as the CSAMP Progress Report does for scheduling purposes, CAMT set forth a detailed  
15 schedule for these tasks, as well as milestones for this phase of CSAMP. *Id.* at 10-31.

16 CAMT also proposes to draw upon the resources of the Delta Science Program (“DSP”) and the mechanisms outlined in the Delta Science Plan to facilitate implementation of the work  
17 plans. Specifically, the DSP would: (a) provide guidance on scientific methods and best practices  
18 and ensure consistency with the Delta Science Plan, (b) help identify technical experts that  
19 would design and carry out the scientific investigations called for in the CAMT work plan and  
20 synthesize results, (c) help the CAMT identify any additional subject-related expertise that  
21 would assist with scoping and coordination tasks, and (d) manage and implement all independent  
22 review of CAMT science proposals, study plans, and results. *Id.* at 11. Additionally, to assure  
23 relevance and credibility, CSAMP anticipates that all CAMT studies will be designed and  
24 implemented according to scientific principles in the Delta Science Plan, including: (i) well-  
25 stated goals and objectives; (ii) a statement of relevance to the CAMT priority work elements;  
26 (iii) clear conceptual and/or mathematical model(s); (iv) questions and hypotheses that are  
27 clearly linked to the conceptual or mathematical model(s); (v) a study design capable of  
28

1 addressing the questions with sufficient precision and accuracy and with standardized, well-  
 2 documented methods for data collection; (vi) analytical rigor and sound logic for analysis and  
 3 interpretation; (vii) clear documentation of methods, results, and conclusions; and  
 4 (viii) publication of results in peer-reviewed scientific journals or reports. *Id.* at 12.

5 As noted above, the workplans for the three priority areas are summarized below.

6 **1. Progress Has Been Made To Date On Each Priority Area and Future**  
**Schedules For Each Have Been Established.**

7 **a. Fall Outflow Management and Entrainment for Smelt**

8 The priority topic “Fall Outflow Management for Smelt” addresses the Smelt BiOp’s fall  
 9 X2 RPA action (Action 4). Implementation of this action was the subject of disagreement during  
 10 the litigation. It requires that the “low salinity zone” be maintained at a certain geographic  
 11 location downstream (74 kilometers from the Golden Gate Bridge following a “wet” year and at  
 12 81 kilometers east following “above normal” years) during September and October.

13 The workplan for this topic includes three high-priority questions with schedules, and  
 14 several other questions that will be pursued as resources and time permit. For example, the  
 15 workplan includes: schedules for separate reports on Delta Smelt survey data, available life-  
 16 cycle models, and fall outflow and Delta Smelt abundance; it calls for a study plan on outflow  
 17 and Delta Smelt growth and survival; an evaluation of existing data comparing Delta Smelt  
 18 survival during the fall to survival in prior seasons and to fork length at the end of the summer  
 19 and start of the fall; and variability in tidal, daily, weekly, and monthly fluctuations in fall X2 as  
 20 related to water project operations. As resources allow, CSAMP will develop a new or updated  
 21 habitat index based on those habitat attributes that affect growth and survival during the fall, and,  
 22 based on the results of all of the above, contribute new information on the impacts of project  
 23 operations during the fall on the survival of Delta Smelt. Specific analyses and experiments  
 24 designed to address this priority area are detailed in Table 3-1 of the CSAMP Progress Report,  
 25 Rea Decl. ¶ 3, Ex. A at 13-18, which is attached in full at Attachment 1.

26 **b. OMR Management for Delta Smelt**

27 This priority topic area will study environmental factors that relate to Delta Smelt  
 28

1 entrainment, such as turbidity triggers mentioned in the original moving papers. In brief, the  
 2 Delta Smelt BiOp RPA actions that are focused on entrainment are intended to limit Delta Smelt  
 3 entrainment primarily through reductions on negative flows in Old and Middle Rivers (OMR  
 4 flow), which can have the effect of reducing project pumping in the south Delta. It has recently  
 5 been hypothesized by some scientists that Delta Smelt can sometimes be induced to avoid the  
 6 project pumps altogether by a combination of “preventative” management actions that affect  
 7 OMR flow and the turbidity plume that appears to trigger Delta Smelt upstream movement. Rea  
 8 Decl. ¶ 3, Ex. A (CSAMP Progress Report) at 47. If such preventative management actions  
 9 prove to be feasible, they may, in some years, allow for equal or better entrainment protection for  
 10 Delta Smelt while allowing for greater project pumping during the winter and spring.

11 CSAMP has developed a workplan to assess factors affecting adult Delta Smelt  
 12 entrainment, including, completion of First Flush Study analyses. Among other things, the Delta  
 13 Conditions Team (“DCT”), which was not formed or directed by CAMT, but includes  
 14 representatives of the Metropolitan Water District (“MWD”), the National Oceanic and  
 15 Atmospheric Administration (“NOAA”), FWS, California Department of Fish and Wildlife  
 16 (“CDFW”), DWR, the U.S. Bureau of Reclamation, Contra Costa Water District, and others, is  
 17 currently developing a scope of work to use turbidity modeling to examine various “first flush”  
 18 conditions, expected entrainment risks, and potential preventative actions that could be taken to  
 19 reduce entrainment. CSAMP anticipates having a detailed workplan related to the effects of  
 20 entrainment on the Delta Smelt population in April 2014, with an independent review of that  
 21 plan in November 2014. A final peer reviewed product for a life-cycle model approach is  
 22 expected to be available June 2015. Other workplans to develop better estimates of post-larval  
 23 and adult entrainment, and conditions that affect adult movement prior to spawning may be  
 24 explored, as resources allow. The specific analyses and experiments designed to address this  
 25 priority area are detailed in Table 3-2 of the CSAMP Progress Report, Rea Decl. ¶ 3, Ex. A at  
 26 19-23, which is attached in full at Attachment 1.

### 27 **c. South Delta Salmonid Survival**

28 The priority topic area of “South Delta Salmonid Survival” is intended to further the



1 understanding of salmonid survival in the south Delta. While the South Delta Salmonid  
2 Research Collaborative (“SDSRC”) was not formed, or directed by CAMT, CAMT has “looked  
3 to the work of the SDSRC to inform the development of its workplan.” Rea Decl. ¶ 3, Ex. A at  
4 58. As discussed below, CSAMP and the Court’s extension of the remand schedule have allowed  
5 the SDSRC to engage in very productive discussions regarding salmonid survival in the south  
6 Delta and its relationship to project operations. Rea Decl. ¶¶ 6-8. A detailed description of the  
7 work performed by the SDSRC, including the technical products it has produced, is incorporated  
8 in the annual progress report to CSAMP Progress Report, and the full SDSRC Progress Report is  
9 Attachment A thereto. *See* Rea Decl. at ¶ 8, Ex. B (SDSRC Progress Report).

10 In brief, NMFS and DWR jointly established the SDSRC with input and participation  
11 from the U.S. Bureau of Reclamation, FWS, California Department of Fish and Wildlife, the  
12 Delta Stewardship Council, and Plaintiffs State Water Contractors and Westlands Water District,  
13 as an outgrowth of the 2012 Joint Stipulation for Central Valley Project (“CVP”)/State Water  
14 Project (“SWP”) operations. *Consolidated Salmonid Cases*, U.S. District Court for the Eastern  
15 District of California, Case No. 1:09-CV-01053 LJO-DLB (Doc. 660). Since late January 2013,  
16 the SDSRC (or its technical working group) has been meeting to explore research opportunities  
17 that would reduce the scientific uncertainties about the effects of San Joaquin River inflow and  
18 SWP and CVP water exports on south Delta hydrodynamics, and the effects of hydrodynamics  
19 on factors affecting migration behavior and survival of juvenile salmonids. Rea Decl. ¶ 6. The  
20 full SDSRC has convened on five occasions—a first kickoff meeting followed by four meetings  
21 at which the SDSRC Science Working Group provided briefings on its progress, challenges, next  
22 steps, and necessary decisions made by managers. Rea Decl. ¶ 6. The Science Working Group  
23 has convened eleven times in the past year, and its representatives have twice briefed the CAMT  
24 during this period on its progress. Rea Decl. ¶ 6.

25 The yearlong SDSCRC collaboration among technical representatives has resulted in the  
26 development of a series of technical products, including: (i) a conceptual model of south Delta  
27 salmonid migrational survival; (ii) an analysis of the statistical power for a one-year through-  
28 Delta survival study of steelhead and fall-run Chinook salmon; (iii) identification of potential

1 effect size differences that may be important biologically for the purposes of experimental  
2 design development and scientific inquiry; (iv) fourteen hypothesis-based concept proposals for  
3 research improving the understanding of south Delta salmonid survival; (v) guidelines for  
4 concept proposal evaluation; (vi) a review of the ongoing 6-year steelhead study (Salmon BiOp  
5 RPA IV.2.2), to include identification of inflow-export conditions that have not yet been tested;  
6 (vi) identification of opportunities and constraints to enhance learning from the 6-year steelhead  
7 study in 2014; and (vii) identification of a new “Desktop Survival Study” for implementation as  
8 early as 2014 that includes additional analysis or meta-analysis of data from previously  
9 conducted studies of the survival and movement of tagged salmonids. *See* Rea Decl. ¶¶ 7, 8, Ex.  
10 B at 24.

11 The CSAMP workplan incorporates the work of the SDSRC. In brief, a re-chartered  
12 SDSRC that will report to CAMT intends to: revise and agree on a written proposal of data  
13 synthesis and meta-analysis of existing data from previous Delta salmonid tagging studies to  
14 address uncertainties about the ecological effects of exports on salmonid survival by April 2014;  
15 issue a progress report in March 2015; and issue a draft report by 2015, followed by a manuscript  
16 for publication. A related effort of the SDSRC will be to convene a series of working sessions to  
17 potentially refine the SDSRC conceptual model and formally screen published reports and data  
18 to identify key information gaps in the context of a conceptual model. Draft and final reports are  
19 expected in September and November, 2014, respectively. Pending results of the information gap  
20 analysis and initial data synthesis efforts, a working group will investigate alternative metrics for  
21 management of south Delta water operations. A status check of the working group will be  
22 prepared in June 2014, and the working group will prepare a progress report by November 2014.  
23 By March 2014, CSAMP will have conducted a working session to agree on an expanded scope  
24 to focus more broadly on indirect ecological effects of water export and management actions to  
25 minimize the effects that influence salmonid survival. SDSRC has also been reviewing the 6-  
26 year steelhead study (Salmon BiOp RPA action IV.2.2) to determine whether experimental  
27 modifications are warranted. *See* Rea Decl. ¶ 8, Ex. B at 5, 24. The first three years of testing  
28 have identified several conditions that are underrepresented. *Id.* at 17. The SDSRC had been

1 planning on manipulating operations in the spring of this year. However, the drought will make  
 2 this challenging. *See* Fujitani Decl. ¶ 8. CAMT will identify options, develop implementation  
 3 plans, and prepare a request for prescribed conditions no later than June 2014. Implementation is  
 4 expected to occur in 2015 or later, depending on environmental conditions. The specific analyses  
 5 and experiments designed to address the priority topic of “South Delta Salmonid Survival” are  
 6 detailed in Table 3-3 of the CSAMP Progress Report, Rea Decl. ¶ 3, Ex. A at 24-30, which is  
 7 attached in full at Attachment 1.

8 **d. Development of Life-Cycle Models for Delta Smelt and**  
 9 **Salmonids**

10 This Court and independent scientific reviews of Delta water management actions have  
 11 called for the development and use of “lifecycle models.” *In re Consolidated Salmonid Cases*,  
 12 791 F. Supp. 2d 802, 841 (E.D. Cal. 2011); *In re Consolidated Delta Smelt Cases*, 760 F. Supp.  
 13 2d 855, 885 (E.D. Cal. 2010). These models allow investigators to integrate multiple effects  
 14 occurring at different times over the full life-cycle, potentially enabling investigators to estimate  
 15 and parse out population level effects of conservation measures or water operations management  
 16 strategies. For Delta Smelt, which typically live only one year, a life-cycle model could predict  
 17 the effects of taking action in different months or seasons of the year depending on which  
 18 developmental stage of the fish is present at that time. Multiple, separate efforts are underway to  
 19 develop a Delta Smelt life-cycle model, including a model that has been in development by Ken  
 20 Newman (FWS) for more than two years. For salmonids, a life-cycle model could be relevant to  
 21 examining the role hydrodynamics and water quality (which may be affected by river flows,  
 22 SWP and CVP exports, OMR reverse flows, Delta inflow and outflow, tidal hydrodynamics and  
 23 hydrologic conditions overall) as factors affecting the probability that salmon will survive  
 24 through the different stages of their life cycle. Rea Decl. ¶ 3, Ex. A at 79. NMFS is in the process  
 25 of developing a life-cycle model for winter-run Chinook salmon which may also benefit from  
 26 stakeholder input through CSAMP. *See* Rea Decl. ¶ 20.

27 The CSAMP anticipated establishing a modeling group, which could serve as a forum for  
 28 exchange of information about the development, structure and use of life-cycle models for both

Delta Smelt and salmonids, with the objective of transparency. King Moon Decl. ¶ 9. Delta Smelt life-cycle model information from the Interagency Ecological Program (“IEP”), undertaken by Ken Newman (FWS), would build a life-cycle model combining the current knowledge of the species life history with the extensive trawl survey data on distribution and abundance of Delta Smelt. Lohoefer Decl. ¶ 15. Phase 1 of this effort will develop a life history model for Delta Smelt, and Phase 2 will either develop multiple single species life history models for one or more fish species, or a single integrated multi-species life history model. A presentation of Dr. Newman’s Delta Smelt life-cycle model work was given to the IEP in May 2013. *Id.* The model reached a milestone state of development and a first publication is in preparation. In addition, FWS has hired a PhD graduate Leo Polansky, for a minimum of two years, to provide technical assistance with ongoing preliminary exploratory data analysis, state-space model formulation, and model fitting. *Id.* Also in May 2013, Dr. Newman began collaborative work with David Fullerton (MWD) and Mark Maunder (Inter-American Tropical Tuna Commission), with the latter providing technical assistance with model fitting using AD Model Builder. *Id.*

A briefing about the status of the Southwest Fisheries Science Center (“SWFSC”) winter-run salmonid life-cycle model and its specific components will be provided to CAMT and interested parties by April 2014. Rea Decl. ¶ 3, Ex. A at 25 (Table 3-3, element 2). Thereafter, CAMT will assess other potential modeling needs. CAMT will discuss the SWFSC winter-run salmonid life-cycle model, its potential limitations, and whether there are elements of other salmon models that would be beneficial to incorporate or link to the winter-run Chinook model. Pending acquisition of new resources, CAMT will update the status of this review in September 2014, and complete a preliminary analysis and write up by November 2014. *Id.* at 27 (Table 3-3, element 7).

### C. Conclusion

CSAMP is up and running, and proceeding toward the collaborative scientific progress envisioned by Movants. Likewise, other previously described Delta scientific efforts have also advanced during this first extension. A further extension is necessary and warranted to allow this

important scientific work to proceed and to accomplish CSAMP's mission of creating robust and collaborative science.

## **II. Positions Of Remaining Parties Regarding Progress and Extension of Remand Deadlines<sup>4</sup>**

No Plaintiff opposes the above-requested extension. Plaintiffs add their separate position statements below. Defendant-Intervenors request a six-month extension, rather than another yearlong extension, for the reasons discussed below.

### **A. Plaintiffs San Luis & Delta-Mendota Water Authority, Westlands Water District, Family Farm Alliance, Stewart & Jasper Orchards, Arroyo Farms LLC, King Pistachio Orchard, Oakdale Irrigation District, South San Joaquin Irrigation District and Stockton East Water District.**

Plaintiffs San Luis & Delta-Mendota Water Authority, Westlands Water District, Family Farm Alliance, Stewart & Jasper Orchards, Arroyo Farms LLC, King Pistachio Orchard, Oakdale Irrigation District, South San Joaquin Irrigation District and Stockton East Water District support a further extension of the remand deadlines, in order to allow the CSAMP process to continue. There has been meaningful progress in the ten months since the Order. While the process has involved areas of disagreement, it has also resulted in areas of agreement, and continuing the process is preferable to the alternative of stopping the collaboration now. Stopping now would mean issuance of a final smelt biological opinion this year, without the benefit of the new information the process should yield regarding the priority areas listed above, including the X2 action and OMR restrictions. The work planned for 2014 and beyond should serve to better inform the consultations and improve the next set of smelt and salmon biological opinions. These plaintiffs believe these potential benefits are worth allowing more time for this process.

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<sup>4</sup> Given time constraints, neither Movants nor the parties have had time to review most of these separate positions or provide material responsive statements. To the extent the Court would like such statements, the parties will accommodate such request. In particular, Plaintiff-Intervenor DWR would appreciate the opportunity to comment on the benchmark conditions proposed in the Metropolitan Water District/State Water Contractors' statement. DWR also has not had the opportunity to review the Defendant-Intervenors' Environmental NGO statement in advance of this filing.

**B. State Contractor Plaintiffs****1. Introduction**

The Metropolitan Water District of Southern California and the State Water Contractors (collectively, “State Contractor Plaintiffs”) do not oppose the request of Federal Defendants and Plaintiff-Intervenor California Department of Water Resources (collectively, “Movants”) for a further extension of the respective remand schedules by an additional year, if the conditions outlined below are implemented going forward.

When the Collaborative Science and Adaptive Management Program (“CSAMP”) was first envisioned in November 2012, the State Contractor Plaintiffs cautiously shared Movants’ optimism that the program would indeed reflect a paradigm shift in the process by which the agencies and stakeholders plan to develop scientific information relevant to the remand process. As such, the State Contractor Plaintiffs did not oppose Movants’ first proposal for a remand extension. Smelt Doc. No. 1093; Smelt Doc. No. 1103.

The State Contractor Plaintiffs are not satisfied that CSAMP has achieved its potential. After nine months, the concerns expressed by the Court in the Memorandum Decision and Order Regarding Motion to Extend Remand Schedule, Smelt Doc. No. 1106; Salmonid Doc. No. 739 (“Order”) have proven to be prescient. In response to Movants’ proposal for the CSAMP process, the Court stated that, “[t]his lack of detail provides the Court with little assurance that CSAMP will proceed as envisioned, let alone that CSAMP will actually result in scientific progress, as opposed to ‘collaborative’ gridlock.” Order at 15:9-11. The lack of any measurable goals or concrete action items for the program led the Court to decide that, “rather than granting Movants a three-year blank check, during which time CSAMP could stagnate or entirely fall apart, the Court will grant a staged extension as described below.” Order at 15:11-13. Although the workplans developed this past year represent progress, there is a need for clear benchmarks to ensure that the collaborative process does not languish. The State Contractor Plaintiffs now respectfully ask the Court to withhold granting Movants a blank check for the coming year, and instead to incorporate benchmarks for the CSAMP process going forward.

## 2. CSAMP Goals For 2013

The overall goal of CSAMP was to develop a robust science and adaptive management program that would inform implementation of the existing Reasonable and Prudent Alternatives (“RPAs”) and improve the next Biological Opinions (“BiOps”). *See* Lohoefer Supp. Dec. Att. 1, Smelt Doc. No. 1101-2 at 2. Key milestones for 2013 included reaching mutual agreement on the hypotheses to be studied, synthesis of existing information and identification of information gaps, and “development of new modeling and other predictive tools with which to evaluate the effects of current and alternative strategies for protection and increased abundance of delta smelt and salmonids” which would be ready for implementation by mid-2014. Second Hoffman-Floerke Dec., Smelt Doc. No. 1101-1 ¶ 20; *see also* Lohoefer Supp. Dec. ¶ 25; Rea Dec., Smelt Doc. No. 1101-3 ¶ 22. After nine months, these goals are still in the preliminary “study and discuss” stage, with no indication of how new research will be incorporated into the BiOps. Progress in priority topic areas is reviewed briefly below.

**OMR/Entrainment.** The agencies proposed a CSAMP working group that would collaborate with others on the development of life-cycle models, develop common data sets and assumptions to use in the models, and evaluate the population level effects of various stressors. Second Hoffman-Floerke Dec. ¶ 11; *see also* Lohoefer Supp. Dec. ¶ 16. CSAMP would also yield “better tools to predict turbidity movement” and coordinate multi-party research on the turbidity trigger issue that would be incorporated into the reconsultation process. Second Hoffman-Floerke Dec. ¶¶ 8-9. Thus far, CSAMP has not contributed to the development of any mutually agreed-upon life-cycle models for delta smelt or salmonids. *Progress Report to the Collaborative Science Policy Group prepared by the Collaborative Adaptive Management Team (“CAMT”)* (Feb. 14, 2014) (“Progress Report”) at 45. Recent conceptual models are currently being utilized as “tools to identify uncertainties and disagreements” and to formulate additional questions and hypotheses, rather than to generate new quantitative data for the BiOps. *Id.* The Progress Report emphasizes that the conceptual models require substantial additional refinement and “should not be taken as a sign of agreement of all [CAMT] group members . . . .” *Id.* According to the OMR/Entrainment Workplan, turbidity research is still in the scope of work

1 stage. *Id.* at 19.

2 **Fall Outflow Management for Delta Smelt.** The agencies proposed that CSAMP  
3 would generate data for the reconsultation process through “the development of quantitative  
4 estimates of delta smelt abundance, survival, growth and reproductive success as a function of  
5 salinity and habitat use, and assessment of the importance of additional environmental factors  
6 such as zooplankton availability, water velocities, nutrients, competition with other species and  
7 predation.” Second Hoffman-Floerke Dec. ¶ 7. According to the Fall Outflow Workplan,  
8 investigation of the effects of fall outflow on delta smelt is still in the “Study plan development”  
9 stage. Progress Report at 14.

10 **South Delta Salmonid Survival.** The agencies proposed that the South Delta Salmonid  
11 Research Collaborative (“SDSRC”) would develop conceptual models and draft testable  
12 hypotheses in 2013, with study plan implementation in 2014. Schiewe Dec., Smelt Doc. No.  
13 1101-4 ¶ 12. “This measured approach, which would be overseen and synthesized with other  
14 research through the CSAMP, is highly likely to yield vital information needed to support a new  
15 or revised Biological Opinion.” *Id.* ¶ 10. According to the South Delta Salmonid Survival  
16 Workplan, these efforts appear to be at least a year behind schedule. Progress Report at 24-26.

17 **Annual Operational Plan.** The agencies also did not adopt an annual operational plan  
18 for 2013 by the promised date of December 15. *See* Lohoefer Supp. Dec. Att 1 at 2.

### 19 **3. Proposed CSAMP Benchmarks For 2014**

20 The State Contractor Plaintiffs propose the following benchmarks and action items to  
21 ensure that the CSAMP process will be successful going forward. These steps would reflect the  
22 kind of meaningful collaboration and robust science that were originally envisioned for CSAMP  
23 and for the development of new BiOps, but which have not yet come to fruition.

24 **Six Month Progress Reports.** The parties should be required to submit a joint status  
25 report on the progress of CSAMP and the benchmarks described below at six month intervals.  
26 Such reports have been effectively implemented in other cases to enable general court  
27 supervision over the remand process. *See, e.g., Nat’l Wildlife Fed’n v. NMFS*, No. CV 3:01-640-



1 RE (D. Or. Oct. 7, 2005) (opinion and order of remand).<sup>5</sup>

2 **Life-cycle model Working Group.** By August 1, CAMT should be required to convene  
3 a multi-party working group of representatives drawn from parties to the litigation or their  
4 designees to develop life-cycle models for delta smelt and salmonids and/or to review and  
5 comment on models being developed outside of CAMT. That working group would allow all of  
6 the representatives to engage in the sharing of existing work, discuss improvements that may be  
7 made, and provide for a collaborative exchange on the functionality, capability, limitations and  
8 utility of the models.

9 **Turbidity Research.** By August 1, CAMT should be required to finalize a study plan  
10 for new turbidity research with a specific description, including the steps to be taken and the  
11 schedule for those actions, identifying how that research will be integrated into decision-making  
12 with respect to interim operations and the reconsultation process.

13 **Development of New BiOps.** In each six month progress report to the court, the parties  
14 should be required to describe how the research, modeling, and other work completed at that  
15 point will be incorporated into the reconsultation process along with a schedule of action items  
16 and proposed milestone dates for the structured development of new BiOps. In addition, by  
17 August 1, the United States Fish and Wildlife Service and National Marine Fisheries Service  
18 should be required to collaborate with the other parties to the litigation to devise a structured  
19 approach for the development of new BiOps, including an effects analysis that draws upon the  
20 best available scientific information.

21 **Annual Operational Plan.** By August 1, CAMT should convene a working group to  
22 begin work on the Annual Operational Plan for the following year.

23 <sup>5</sup> In that litigation, Judge Redden ordered that “NOAA shall file detailed written status reports  
24 regarding progress made on remand every 90 days, beginning on January 2, 2006. Any party  
25 or amici shall have 5 days to comment on the status reports. The court will hold status  
26 conferences approximately 5 days after comments are filed. The comments shall be 2 pages or  
27 less in length and shall be designed not for the purpose of objecting to NOAA’s reports, but  
28 rather to assist the court, the parties, and amici in narrowing the issues to be addressed during  
the status conferences. NOAA’s first status report shall include, at a minimum, preliminary  
information from which the court, the parties, and amici are able to gain some understanding of  
(1) the legal framework NOAA intends to use in its jeopardy analysis, (2) the nature and scope  
of any proposed agency action and/or RPA, and (3) NOAA’s plan for collaboration with the  
sovereign entities.” *Id.* at 12.

#### 4. Science Investigations Outside Of CSAMP

The State Contractor Plaintiffs believe there are important science investigations that were not included in the CSAMP process in 2013 for various reasons, including a claimed lack of resources or a difference of scientific opinion about their importance. These other science investigations, which are being conducted by the federal agencies, the public water agencies, and others, may be necessary or useful in developing robust BiOps and RPAs. This statement of non-opposition to the further extension of the remand period is not meant to indicate that the State Contractor Plaintiffs agree that CAMT should be considered the exclusive forum for studies that will inform the new BiOps. Rather, it is the State Contractor Plaintiffs' position that there may be other studies, including ones that the State Contractor Plaintiffs may pursue, that should also be considered as part of the section 7 consultation process. However, the aforementioned recommended benchmarks should assist in improving the CAMT process, so that it may achieve its intended goal of informing implementation of the RPAs and result in improved BiOps.

#### 5. Conclusion

The State Contractor Plaintiffs are willing to support another year of CSAMP if specific benchmarks are incorporated going forward. With those conditions, the State Contractor Plaintiffs do not oppose Movants' request for a further extension of the remand period.

#### C. Separate Statement of Kern County Water Agency and the Coalition for a Sustainable Delta

During the past nine months, Plaintiffs Kern County Water Agency ("Kern") and the Coalition for a Sustainable Delta ("Coalition") have dedicated substantial resources to active participation in the Collaborative Science and Adaptive Management Program ("CSAMP"). Despite reservations, Kern and the Coalition engaged in the process in good faith in the hopes that the federal and state parties would live up to the commitments made and all parties to the process would work collaboratively to (i) assess the efficacy of existing and alternative management actions and operational strategies during the remand period and (ii) develop a structured decision-making process grounded in adaptive management to gather, critically assess,

1 and synthesize scientific information for the purpose of informing rigorous effects analyses and  
2 biological opinions.

3 The process to date has fallen short of our expectations. In our view, four key topics  
4 must be addressed in the coming months if the process is to be fruitful. We understand that all  
5 the parties agree that the Progress Report is a working document, and all parties intend to discuss  
6 further modification or refinement of the most recent additions to the Progress Report with the  
7 Collaborative Adaptive Management Team (“CAMT”) in the weeks following filing of this Joint  
8 Report with the Court.

9 First, **the federal agencies must commit the resources necessary to actively engage in**  
10 **and contribute to the process.** While the Fish and Wildlife Service has actively engaged in  
11 recent months, the failure of the National Marine Fisheries Service to dedicate sufficient  
12 resources to the process to date resulted in halting progress for periods of weeks or even months  
13 on some fronts. Because the federal agencies argue that a further extension is necessary in order  
14 that they can bring to bear the resources necessary to make this process a success, we expect that  
15 they will indeed bring such resources to bear at levels greater than was evident during the past  
16 year.

17 Second, **we are concerned about the limited role of Kern, the Coalition, and other**  
18 **interested parties in the process for conducting investigations and seeking independent**  
19 **review of the scientific products that result from those investigations.** Consistent with the  
20 spirit of the CSAMP, we contend that the stakeholder members of CAMT should have a  
21 prominent role in the process of scoping scientific investigations, ensuring appropriately  
22 qualified technical experts conduct such investigations, and establishing the process to review  
23 the products of those investigations. Such investigations, to be effective, also must include an  
24 articulation of the task; a critical review and assessment of the available empirical research and  
25 associated findings, as relevant; a description of the methods and data used; the results obtained,  
26 a discussion of the robustness of the results, including limitations of the data and methods used;  
27 sources of uncertainty; and, to the extent applicable, disagreements among the authors regarding  
28 the methods, data, and/or results. While the process proposed in the Progress Report adequately

1 addresses some of these requirements, finalizing this process, forming the science work groups,  
2 and initiating work identified in the work plans within the next 60 days is imperative to  
3 completing high priority tasks in 2014.

4 Third, the Progress Report does not set out, or describe a process to set out, a structured  
5 approach to the development of a new biological assessment (“BA”) by the Bureau of  
6 Reclamation and new biological opinions (“BiOps”) by the Fish and Wildlife Service and  
7 National Marine Fisheries Service. While the consultation regulations (50 C.F.R. pt. 402) and  
8 the Section 7 Consultation Handbook offer a general roadmap for completion of the effects  
9 analyses and biological opinions, **it is imperative for the parties to the CSAMP to devise a**  
10 **structured approach for development of a new BA and new BiOps** that will provide a  
11 roadmap whereby scientific data, analyses, and findings that emerge from the collaborative,  
12 adaptive management process are integrated into the process of determining whether continuing  
13 operations of the Central Valley Project and State Water Project are likely to jeopardize the  
14 continued existing of listed species and/or result in destruction or adverse modification of  
15 designated critical habitat of such species and developing incidental take statements applicable to  
16 the Central Valley Project and State Water Project.

17 Fourth, **the federal and state agencies must abide by the commitments made to this**  
18 **Court and the parties regarding deadlines and collaborative development of documents**  
19 **and plans.** In 2013, the federal and state agencies failed to work collaboratively with the CAMT  
20 to develop an annual operational plan despite making an express commitment to do so by  
21 December 15, in multiple court filings (*e.g.*, Doc. 713-1, Dec. 20, 2012, Doc. 1101-2, March 15,  
22 2013). This Court should clarify that such commitments are binding.

23 Despite significant reservations, Kern and the Coalition continue to see the promise that  
24 the CSAMP holds for more open and effective resource management in the future. As a  
25 consequence, we are prepared to invest our hope and our resources in the process for an  
26 additional year with the understanding that the above shortcomings will be addressed. At the  
27 same time, we join in and support the statement of State Contractor Plaintiffs. Subject to the  
28 foregoing, Kern and the Coalition do not oppose the one-year extension of time being sought by

1 Movants.

2 **D. Defendant-Intervenors' Position**

3 Over the past year, several representatives of Defendant-Intervenor organizations have  
4 participated in both the Collaborative Science and Adaptive Management Program (CSAMP)  
5 and Collaborative Adaptive Management Team (CAMT). We agree with several parties that  
6 these forums have provided a useful locus for discussing disagreements among some parties.  
7 However, it is clear that considerable differences of opinion remain about not only underlying  
8 scientific approaches and conclusions, but about the purpose and scope of the CSAMP and  
9 CAMT. Those differences have not been resolved in the last year, casting considerable  
10 uncertainty over the ultimate success of this effort.

11 For example, a statement circulated by Kern County Water Agency and the Coalition for  
12 a Sustainable Delta makes several assertions about the process with which Defendant-  
13 Intervenors strongly disagree, which disagreement has been repeatedly expressed in CSAMP and  
14 CAMT meetings. Perhaps most importantly, this process is not and cannot be a substitute for the  
15 agencies' performing their independent obligations under section 7 of the Endangered Species  
16 Act nor obligate the agencies to incorporate any findings that emerge from CSAMP into their  
17 legal determination whether continuing Central Valley Project- State Water Project operations  
18 are likely to jeopardize the continued existence of listed fish species or result in the destruction  
19 or adverse modification of their critical habitat. Indeed, if whatever emerges from this process  
20 fails to represent the best available science, then it would be a violation of the agencies'  
21 obligations to rely upon it. Moreover, the desire of some of the plaintiffs to give the stakeholder  
22 members of CAMT a prominent role in scientific design and review of CSAMP, rather than  
23 ensuring the input of qualified independent experts, makes it unlikely that the process will yield  
24 the best available science.

25 Nevertheless, Defendant-Intervenors intend to continue to participate in the CSAMP and  
26 CAMT to the extent that resources allow. However, Defendant-Intervenors believe that a shorter  
27 extension than one year is appropriate at this time, both because of the ongoing uncertainties  
28 surrounding CSAMP and CAMT and because of the recent notice from the Ninth Circuit Court

of Appeals indicating that an opinion is “anticipated” in the cross-appeals concerning the 2008 delta smelt biological opinion. *San Luis & Delta-Mendota v. Locke*, Case No. 12-15144 (9th Cir. Jan. 27, 2014), ECF No. 125. That opinion will inevitably have an impact on the remand – its scope and timing. The parties and the Court will be better able to assess the appropriateness of a revised remand deadline after seeing that opinion. Therefore, Defendant-Intervenors request that the Court extend the existing remand deadlines by six months and direct the parties to file updated status reports within one week of the Ninth Circuit ruling, or within three months of this filing, whichever is sooner.

Dated: February 18, 2014

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**[MOVANTS' PROPOSED] ORDER**

Good cause appearing, and based on the stipulation of the parties, the court hereby orders as follows:

1. IT IS HEREBY ORDERED ADJUDGED, AND DECREED, that all deadlines in both the *Smelt* and *Salmonid* cases are extended by one year from the date of this order. On or before [date one year from entry of order], 2015, the parties shall submit a joint status report to the Court detailing progress that has been made in connection with the CSAMP as well as providing additional information about CSAMP's future activities and how any results will be incorporated into the consultation processes. As part of any such submission, the Court expects to see detailed schedules describing how CSAMP and the consultation processes in both cases will proceed. Concurrent with the filing of the joint status report, the Court will entertain a request to extend the remand schedule by an additional year, with the understanding that if substantial progress has been made along the lines outlined by Movants, such an extension will be granted.

**IT IS SO ORDERED.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

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### **CERTIFICATE OF SERVICE**

I hereby certify that on February 18, 2014, I filed a true and correct copy of the foregoing document with the Court's CM/ECF system, which will generate a Notice of Filing to all attorneys of record, including the following:

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**Eastern District of California Livestock System**

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The following transaction was entered by Oliphant, Bradley on 2/18/2014 at 3:11 PM PST and filed on 2/18/2014

**Case Name:** San Luis & Delta-Mendota Water Authority et al v. Locke et al  
**Case Number:** 1:09-cv-01053-LJO-BAM  
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Ken Salazar  
Lester Snow  
United States Bureau of Reclamation  
United States Department of Commerce  
United States Department of the Interior  
United States National Oceanic and Atmospheric Administration

**WARNING: CASE CLOSED on 12/12/2011**

**Document Number:** 745

### Docket Text:

**JOINT STATUS REPORT** by James W. Balsiger, Michael L. Connor, Donald R. Glaser, Gary F. Locke, Jane Lubchenco, Rodney R. McInnis, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Ken Salazar, Lester Snow, United States Bureau of

**Reclamation, United States Department of Commerce, United States Department of the Interior, United States National Oceanic and Atmospheric Administration. (Attachments: # (1) Attachment 1 (Tables Of CAMT Workplans))(Oliphant, Bradley)**

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**Document description:** Attachment 1 (Tables Of CAMT Workplans)

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